

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03 – PLR-146649-03

Date:

December 05, 2003

Re:

Foreign Parent =

Distributing =

Controlled =

FSub =

LLC1 =

LLC2 =

Foreign Transferee =

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Country A =

Country B =

State C =

d =e =

Business A =

Business B =

Business C =

Business D =

Business E =

Dear :

We respond to your letter dated August 6, 2003, requesting rulings on the Federal income tax consequences of a proposed transaction. The information in that request and in the subsequent correspondence of November 26, 2003, is substantially set forth below.

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Distributing, a State C corporation, is a wholly owned subsidiary of Foreign Parent, a Country A corporation. Controlled, a State C corporation, is wholly owned by Distributing. Controlled owns d percent of FSub, a Country B corporation, and Distributing owns the remaining e percent. LLC1 and LLC2, both State C limited liability companies, are wholly owned by Distributing and are disregarded entities for federal income tax purposes. Foreign Transferee, a Country A corporation, is wholly owned by Foreign Parent. Distributing, Controlled, LLC1 and LLC2 use the accrual method of accounting. Distributing files a consolidated federal income tax return with its wholly owned domestic subsidiaries.

Distributing is a holding company and is engaged in Business A and Business B through LLC1 and LLC2. LLC1 is directly engaged in Business A and Business B, and LLC2 provides maintenance, repair, and support services for Business E. Distributing is engaged in Business C and Business E through other wholly owned domestic and foreign subsidiaries. Controlled is directly engaged in Business D. Globally, Foreign Parent has started to reorganize its operations in order to separate Business D from its other operating business units.

We have received financial information indicating that Business A, Business B, and Business D each have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

To improve the fit and focus of Controlled's Business D within the Foreign Parent corporate structure and enhance Controlled's performance, the taxpayer has proposed the following transaction:

- (i) Distributing will sell its e percent interest in FSub to Foreign Transferee pursuant to the proposed separation of Distributing and Controlled.
- (ii) Distributing will distribute all of the stock of Controlled to Foreign Parent. Foreign Parent will surrender a pro-rata portion of its stock of Distributing in exchange for Controlled stock.
- (iii) Following the distribution, Foreign Parent will transfer all of the Controlled stock to Foreign Transferee in exchange for stock of Foreign Transferee or as a capital contribution in a transaction intended to be nontaxable under §351(a).

The taxpayers have made the following representations in connection with the proposed transaction:

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- (a) The fair market value of Controlled stock to be received by Foreign Parent will be approximately equal to the fair market value of Distributing stock surrendered by Foreign Parent in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than as that of a shareholder of the corporation.
- (c) The five years of financial information submitted on behalf of Distributing and Controlled are representative of each corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the distribution, Distributing and Controlled each will continue the active conduct of its business, independently and with its separate employees.
- (e) The distribution of the stock of Controlled is carried out for the following corporate business purposes: fit and focus. First, the separation of Business D is a necessary step in Foreign Parent's long-term vision of having each of its businesses independent and self-reliant. Second, Business D needs to adjust its business model, and this adjustment would be easier if Business D was separated from Businesses A, B, C, and E. Third, the separation of Business D will solve problems created by having Business D in the same corporate structure as Businesses A, B, C and E. The distribution of the stock of Controlled is motivated, in whole or in part, by one or more of these corporate business purposes.
- (f) Except as discussed above with respect to the contribution of Controlled to Foreign Transferee, there is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock or securities in Distributing or Controlled after the distribution.
- (g) There is no plan or intention by Distributing or Controlled, directly or through any subsidiary corporation, to purchase or otherwise reacquire any of its outstanding stock after the transaction.
- (h) There is no plan or intention to liquidate Distributing or Controlled, to merge any of such corporations with any other corporation, or to sell or otherwise dispose of the assets of any such corporations after the distribution, except in the ordinary course of business.

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(i) The distribution is not part of a plan or series of related transactions (within the meaning of §355(e)), pursuant to which one or more persons will acquire (other than as a result of the distribution) directly or indirectly stock possessing a 50 percent or greater interest (as defines in §355(e)(4)(A)) of either Distributing or Controlled.

(j) The distribution of Controlled stock will not be a disqualified distribution as defined in §355(d)(2). Immediately after the distribution, no person will hold “disqualified stock” in Distributing or Controlled, which constitutes a 50 percent or greater interest in such corporations within the meaning of §355(d).

(k) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution.

(l) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See Treas. Reg. §1.1502-13 and Treas. Reg. §1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect, Treas. Reg. §1.1502-13 as published by T.D. 8597). Further, Distributing’s excess loss account, if any, with respect to the Controlled stock will be included in income immediately before the Distribution. There is not expected to be an excess loss account.

(m) Payments made in connection with the continuing transactions, if any, between Distributing and Controlled, will be fair market value based on the terms and conditions arrived at by the parties bargaining at arm’s length.

(n) No two parties to the transactions are investment companies as defined in §§368(a)(2)(F)(iii) and (iv).

(o) Distributing was not a United States Real Property Holding Corporation (as defined in §897(c)(2)) at any time during the five year period ending on the date of the distribution. Controlled also was not a United States Real Property Holding Corporation (as defined in §897(c)(2)) at any time during the five year period ending on the date of the distribution.

(p) Neither Distributing nor Controlled will be a United States Real Property Holding Corporation (as defined in §897(c)(2)) immediately after the distribution.

Based solely on the information and representations submitted, we rule as follows:

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- (1) No gain or loss will be recognized by Distributing upon the distribution of its stock in Controlled to Foreign Parent in exchange for stock in Distributing. Section 355(c)(1).
- (2) No gain or loss will be recognized to and no amount will be included in the income of Foreign Parent upon the receipt of the stock of Controlled in exchange for Distributing stock. Section 355(a)(1).
- (3) The basis of the Controlled stock and the Distributing stock in the hands of Foreign Parent immediately after the distribution will be the same as the basis of the Distributing stock immediately prior to the distribution, allocated in proportion to the fair market value of each, in accordance with §1.358-2(a)(2) of the Income Tax Regulations. Sections 358(a), (b), and (c).
- (4) The holding period of the Controlled stock in the hands of Foreign Parent will include the holding period of the Distributing stock surrendered, provided such stock is held as a capital asset by Foreign Parent on the date of the distribution. Section 1223(1).
- (5) Following distribution of the stock of Controlled, earnings and profits will be allocated between Distributing and Controlled in accordance with §312(h) and §1.312-10(b).
- (6) Distributing will not recognize gain or loss under §367(e)(1) on the distribution of the Controlled stock to Foreign Parent. Section 1.367(e)-1(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter; specifically, no opinion is expressed regarding the sale by Distributing of its e percent interest in FSub to Foreign Transferee (e.g. see §304). Further, we do not express any opinion regarding the tax treatment of Foreign Parent's transfer of Controlled stock to Foreign Transferee as a §351(a) transaction.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Filiz A. Serbes

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel

(Corporate)